# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 284. 65

H. L. PINNEY, C. L. PINNEY, W. C. PATTERSON, AND THOMAS BROOKS, PLAINTIFFS IN ERROR,

*vs.*

R. T. NELSON.

IN ERROR TO THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

FILED MAY 16, 1900.

(17,766.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 20, 1900.

*a* Original.

In the Supreme Court of the United States.

H. L. PINNEY ET AL., Plaintiff- in Error,
*vs.*
R. T. NELSON, Defendant in Error. } Citation.

UNITED STATES OF AMERICA, *ss:*

To R. T. Nelson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the 17th day of May, 1900, pursuant to a writ of error sued out of said court to the superier court of the county of Los Angeles, State of California, wherein you are defendant and W. C. Patterson, H. L. Pinney, C. L. Pinney, and Thomas Brooks are plaintiffs in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 28th day of March, in the year of our Lord one thousand nine hundred.

W. F. FITZGERALD,
*Judge of the Superior Court of the County of Los Angeles, State of California, Presiding in Department Five Thereof.*

*b* [Endorsed:] Original. In the Supreme Court of the United States. H. L. Pinney *et al.*, plaintiff- in error, *vs.* R. T. Nelson, defendant in error. Citation. Received copy of within citation this 28th day of March, 1900. Taylor & Forgy, att'ys for def't in error. R. T. Nelson, by Taylor & Forgy.

*c* In the Superior Court of the County of Los Angeles, State of California.

R. T. NELSON, Plaintiff,
*vs.*
H. L. PINNEY ET ALS., Defendants }

The defendants, W. C. Patterson, H. L. Pinney, C. L. Pinney, and Thomas Brooks, having made their application for the allowance of the annexed writ of error, and the only questions decided in the said case having been whether the provisions of section 322 of the Civil Code of California are in conflict with the Constitution of the United States, and therefore invalid, and the decision and judgment in this case resting entirely upon the decision of this court that the said section is not in conflict with the provisions of the Constitution of the United States, and the said decision and judgment being erroneous if the said provisions of said Code are in conflict with the provisions of the Constitution of the United States, and this being the highest court of this State having jurisdiction of this action, and it being im-

possible for defendants to review the decision in this case by appeal to the supreme court of California or by further motions or proceedings in this or any other court, except by writ of error to the Supreme Court of the United States, and it appearing that the question presented in the said case is a Federal question—

*d* It is ordered that the writ of error hereto annexed be allowed by this court, and that the same be made a supersedeas, the bond, in the penal sum of one thousand ($1,000.00) dollars, at this time presented being approved.

And I do hereby certify that the superior court of the county of Los Angeles consists of six judges; that there is no chief justice or presiding judge of said court provided for either by the law of California or the rules of said court or any custom thereof; that by the rules of said court the same is divided into six departments, to which the respective cases are assigned, and that the judge of each department alone presides over the same; that the action mentioned in the annexed writ of error was duly assigned to department five of the said superior court of the county of Los Angeles, of which I am the presiding judge, and that all proceedings in said case have been taken in said department and the said case was tried and findings and judgment therein rendered by me.

In testimony whereof witness my hand this 27th day of March, 1900.

W. F. FITZGERALD,
*Judge of the Superior Court, Presiding in Department 5 Thereof.*

*e* UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the superior court of the county of Los Angeles, State of California, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said superior court, before you, between R. T. Nelson, plaintiff, and H. L. Pinney, C. L. Pinney, W. C. Patterson, Thomas Brooks, *et al.*, defendants, a manifest error hath happened, to the great damage of the said H. L. Pinney, C. L. Pinney, W. C. Patterson, and Thomas Brooks, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the seventeenth day of May next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this nin-teenth day of March, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

Seal U. S. Circuit Court, Southern Dist. Cal., 1886.

WM. M. VAN DYRE,
*Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.*

The above writ of error is hereby allowed.

——, ——.

*f* [Endorsed:] 33731. United States Supreme Court. H. L. Pinney, C. L. Pinney, W. C. Patterson, and Thomas Brooks, plaintiffs in error, *vs.* R. T. Nelson, defendant in error. Copy writ of error. A copy of the within writ received and filed Mar. 28th, 1900. C. W. Bell, Co. clerk, by C. G. Keyes, dep. Co. cl'k. C. W. Bell, county clerk and *ex officio* clerk of the superior court of Los Angeles county, State of California, by C. G. Keyes, deputy clerk. Filed Mar. 28, 1900. C. W. Bell, cl-rk, by C. G. Keyes, deputy.

*g* STATE OF CALIFORNIA, } ss:
*County of Los Angeles,* }

I, C. W. Bell, clerk of the superior court of the county of Los Angeles, State of California, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 1 to 32, inclusive, contain a true and complete copy and transcript of the record and proceedings had in said court and of the assignment of errors in the cause of H. L. Pinney *et al.*, plaintiff- in error, *vs.* R. T. Nelson, defendant in error, as the same remain of record and on file in said office, in so far as the same relate to defendants H. L. Pinney, C. L. Pinney, W. C. Patterson, and Thomas Brooks.

And I further certify that no opinion of the court was rendered or filed in said cause.

In witness whereof I have caused the seal of said court to be hereunto affixed this the 25th day of April, in the year of our Lord one thousand nine hundred.

[Seal Superior Court, Los Angeles County, California.]

C. W. BELL, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled 4, 25, 1900. C. W. B.]

1 County of Los Angeles, }
*State of California.* }

R. T. Nelson, Plaintiff,
*vs.*
H. L. Pinney, C. L. Pinney, W. C. Patterson, Thomas Brooks, *et al.*, Defendants.

Plaintiff complains of defendants and alleges:

I.

That the Los Angeles Iron & Steel Company is and was at all times in this complaint mentioned a corporation duly organized and existing under and by virtue of the laws of the State of Colorado, having its principal place of business and its works at the city of Los Angeles, State of California, and doing business within the State of California.

II.

That at all times mentioned in this complaint there were subscribed for and issued of the capital stock of said corporation one thousand three hundred and eleven (1,311) shares and no more, and that all the stockholders thereof, who are named as defendants herein, are and were at all times herein mentioned citizens and residents of the State of California.

III.

That at all times herein mentioned the whole number of 1,311 shares of the said capital stock of said Los Angeles Iron & Steel Company and no more were actually subscribed for by, were issued to, and were owned by, and the ordinary stock certificates
2 therefor were held by the above-named defendants and certain others, and that each of said defendants was at said times a shareholder of and in said Los Angeles Iron & Steel Company in the number of shares set opposite his (or her) name as follows, to wit:

| Name. | No. of shares. | Name. | No of shares. |
|---|---|---|---|
| H. L. Pinney | 50 | C. L. Pinney | 42 |
| R. H. Herron | 25 | F. Irwin Herron | 10 |
| W. C. Patterson | 35 | A. S. Robbins | 155 |
| C. W. Damorel | 91 | J. H. Harris | 25 |
| C. D. Pillsbury | 38 | F. R. Harris | 115 |
| Blanton Duncan | 30 | Albert Thomas (Union iron works) | 35 |
| Clark & Niemann | 1 | F. E. Little | 22 |
| Union Oil Company | 45 | John D. Clark | 6 |
| W. J. Boyle | 35 | W. T. Adams | 66 |
| Thomas Brooks | 38 | J. B. Anjer | 20 |
| Sabina A. Lanon | 5 | L. Bogardus | 2 |
| Chas Lytle | 5 | Mary Spencer Evans | 40 |
| D. C. Wilson | 1 | Jennie V. Durkee | 25 |
| John Rebman | 65 | J. F. Waesch | 20 |
| E. T. Plummer | 2 | Mrs. Mary Baldwin Hook | 8 |
| Mrs. May Baldwin | 9 | | |
| Mrs. Mary E. Yerby | 25 | | |

IV.

That at the time the indebtedness hereinafter mentioned was incurred and contracted by said Los Angeles Iron & Steel Company the whole number of shares of the capital stock subscribed was, as aforesaid, 1,311 and no more, and that each of said defendants above named was then and there the owner and holder of the number of shares of said capital stock hereinabove set opposite his name, and each of said defendants became then and there individually and personally liable for the following proportions respectively of said debt and liability, to wit, said H. L. Pinney for 50/1311, said C. L. Pinney for 42/1311, said R. H. Herron for 25/1311, said F. Irwin Herron for 10/1311, said W. C. Patterson for 35/1311, said A. S. Robbins for 155/1311, said C. W. Damorel for 91/1311, said J. H. Harris for 25/1311, said C. D. Pillsbury for 38/1311, said F. R.
3 Harris for 115/1311, said Blanton Duncan for 30/1311, said Albert Thomas (Union iron works) for 35/1311, said Clark & Niemann for 1/1311, said Union Oil Company for 45/1311, said F. E. Little for 22/1311, said W. J. Boyle for 35/1311, said John D. Clark for 6/1311, said Thomas Brooks for 38/1311, said W. T. Adams for 66/1311, said Chas. Lytle for 5/1311, said J. B. Anjer for 20/1311, said Sabina A. Lanon for 5/1311, said L. Bogardus for 2/1311, said D. C. Wilson for 1/1311, said Mary Spencer Evans for 40/1311, said John Rebman for 65/1311, said Jennie V. Durkee for 25/1311, said E. T. Plummer for 2/1311, said J. F. Waesch for 20/1311, said Mrs. May Baldwin for 9/1311, said Mrs. Mary Baldwin Hook for 8/1311, said Mrs. Mary E. Yerby for 25/1311.

V.

That between November 1st, 1896, and December 7th, 1896, said plaintiff, R. T. Nelson, sold and delivered to said Los Angeles Iron and Steel Company, at the special instance and request of said company, fuel oil to the value of $1,311.50, and as a settlement of the said account the said Los Angeles Iron & Steel Company made, executed, and delivered to said plaintiff its two certain promissory notes in words and figures respectively as follows, to wit:

$645.00. LOS ANGELES, CAL., *Nov. 19th*, 1896.

Sixty days after date we promise to pay to the order of R. T. Nelson six hundred and forty-five dollars, with interest at — per cent. per annum, at our office, value received.

THE LOS ANGELES IRON & STEEL CO.,
By A. S. ROBBINS, *Pres.*
S. G. CHAMBERLAIN, *Ass't Sec'y.*

$666.50. LOS ANGELES, CAL., *Dec. 7th*, 1896.

Sixty days after date we promise to pay to the order of R. T. Nelson six hundred sixty-six and $\frac{50}{100}$ dollars, with interest at — per cent. per annum, at our office, value received.

THE LOS ANGELES IRON & STEEL CO.,
By A. S. ROBBINS, *Pres.*
S. C. CHAMBERLAIN, *Ass't Sec'y.*

That no part of said amount of $1,311.50 or of said notes
4 or either of them has been paid, and that there is now, to wit, September 30th, 1898, due, owing, and unpaid from said Los Angeles Iron & Steel Company to said plaintiff the said amount of $1,311.50, together with the interest thereon as in said promissory notes specified, making in all the sum of $1,475.88.

That the said defendants are individually liable to plaintiff for the respective proportions hereinabove specified of said sum of $1,475.88, and that no part of the same has been paid.

Second cause — action.

And for a second cause of action plaintiff alleges:

I.

Plaintiff expressly refers to paragraphs I, II, III, and IV above set out in this complaint and repleads each and all of said paragraphs, and by such reference and repleading makes each and all of said paragraphs a part hereof, as though the same and each of them should be herein set out.

II.

That between the 1st day of June, 1896, and the 30th day of November, 1896, Beach, Young & Cochran, a copartnership doing business under said firm name and style and composed of Fitz E. Beach, W. L. Young, and John Cochran, sold and delivered to the Los Angeles Iron & Steel Co., at its special instance and request, goods and merchandise, to wit, fuel oil, to the value of $462.00, and that no part of the same has been paid, but the same ever since has been and *how* is wholly due and unpaid.

That the said defendants are individually liable for the re-
5 spective proportions hereinabove specified of said sum of $462.00, and that no part of the same has been paid.

III.

That the said Beach, Young & Cochran, prior to the commencement of this action, assigned, transferred, and set over unto this plaintiff said account and all their right, title, and interest in and to the same, and that plaintiff is now the lawful owner and holder thereof.

And for a third cause of action plaintiff alleges:

I.

Plaintiff expressly refers to paragraphs I, II, III, and IV above set out in the first cause of action in this complaint, and repleads each and all of said paragraphs, and by such reference and repleading makes each and all of said paragraphs a part hereof, as though the same and each of them should be herein set out.

II.

That between October 1st and December 11th, 1896, F. L. Matthay sold and delivered to the Los Angeles Iron & Steel Company goods and merchandise, to wit, fuel oil, to the value of $602.28, and that no part of said sum has been paid; that as a settlement of the said account the said F. L. Matthay drew two drafts upon the said Los Angeles Iron & Steel Company in words and figures respectively as follows, to wit:

$542.28. LOS ANGELES, CAL., *Dec. 11th*, 1896.

Feb'y eleventh, after date, pay to the order of C. H. Matthay five hundred forty-two & $\frac{28}{100}$ dollars, value received, and charge the same to account of—

F. L. MATTHAY.

To the Los Angeles Iron & Steel Co., Los Angeles, Cal.

That said draft was duly presented by said payee and was duly accepted by said company writing across the face thereof as follows, to wit:

Accepted. The Los Angeles Iron & Steel Co., by J. G. Chamberlain, gen'l mgr.

6 That no part of said draft has been paid, and there is now, to wit, September 30th, 1898, due, owing, and unpaid thereon the sum of $604.86.

$60.00. LOS ANGELES, CAL., *Dec. 11th*, 1896.

Thirty days after date pay to the order of Los Angeles Sewer Pipe Co. sixty dollars, value received, and charge the same to account of—

F. L. MATTHAY.

To the Los Angeles Iron & Steel Co., Los Angeles, Cal.

That said draft was duly presented by said payee and was duly accepted by said company writing across the face thereof as follows, to wit:

Accepted. The Los Angeles Iron & Steel Co., by J. G. Chamberlain, gen'l mgr.

That no part of said draft has been paid, and there is now, to wit, September 30th, 1898, due, owing, and unpaid thereon the sum of $67.35.

That said draft bears the following indorsement, to wit:

Pay to the order of C. H. Matthay without recourse on us. Los Angeles Sewer Pipe Co., by W. A. Bingham, sec'y.

III.

That prior to the commencement of this action the said C. H. Matthay, being then and there the owner and holder of said drafts

and each of them, assigned to plaintiff all right, title, and interest in them and each of them and to the debt evidenced thereby, and that plaintiff is now the lawful owner and holder of said drafts and each of them, and that the said defendants are individually liable to plaintiff for the respective proportions hereinabove specified of said sum of $672.21, and that no part of the same has been paid.

Fourth cause of action.

And for a fourth cause of action plaintiff alleges:

I.

Plaintiff expressly refers to paragraphs I, II, III, and IV above set out in the first cause of action in this complaint, and re-
7 pleads each and all of said paragraphs, and by such reference and repleading makes each and all of said paragraphs a part hereof, as though the same and each of them should be herein set out.

II.

That between the 1st day of July, 1896, and the 13th day of November, 1896, the Los Angeles Stoneware Co., a corporation duly organized, existing under the laws of California, sold and delivered to the Los Angeles Iron & Steel Company goods, wares, and merchandise, at its special instance and request, to the value of $173.13, and that no part of the same has been paid; that subsequently and as a settlement of said account the said Los Angeles Iron & Steel Co. made, executed, and delivered to said Los Angeles Stoneware Co. its note in words and figures as follows, to wit:

$173.13. LOS ANGELES, CAL., *Nov.* 13, 1896.

Sixty days after date we promise to pay to the order of Los Angeles Stoneware Co. one hundred seventy-three $\frac{13}{100}$ dollars, at office of Los Angeles Iron & Steel Co.

THE LOS ANGELES IRON & STEEL CO.,
By A. S. ROBBINS, *President.*

That said note bears the following indorsement:

I hereby guarantee the payment of the within note, waiving demand, presentment for payment, protest, and notice of protest. Los Angeles Stoneware Co., W. J. Washburn, p't.

That after said indorsement the said note was delivered to the East Side Bank of Los Angeles, California, and the said bank, prior to the commencement of this action, assigned, transferred, and set over to plaintiff all right, title, and interest in and to the said note and the indebtedness evidenced thereby, and that plaintiff is now the lawful owner and holder thereof.

That no part of said note or of the indebtedness evidenced thereby has been paid, and that there is now, to wit, September 30th, 1898, due, owing, and unpaid thereon the sum of $189.71.

8 That the said defendants are individually liable to plaintiff for the respective proportions hereinabove specified of said sum of $189.71, and that no part of the same has been paid.

Fifth cause of action.

And for a fifth cause of action plaintiff alleges:

I.

Plaintiff expressly refers to paragraphs I, II, III, and IV above set out in the first cause of action in this complaint, and repleads each and all of said paragraphs, and by such reference and repleading makes each and all of said paragraphs a part hereof, as though the same and each of them should be herein set out.

II.

That the Los Angeles Sewer Pipe Association is a copartnership doing business under said firm name and style and composed of J. M. Riley and W. A. Bingham.

III.

That between the 1st day of October, 1895, and the 14th day of November, 1896, the said Los Angeles Sewer Pipe Association sold and delivered to said The Los Angeles Iron & Steel Company goods and merchandise to the value of $133.84, and that no part of the same has been paid.

That as a settlement of the said account the said The Los Angeles Iron & Steel Co. made, executed, and delivered to said Los Angeles Sewer Pipe Association its note in words and figures as follows, to wit:

$133.84. LOS ANGELES, CAL., *Nov.* 14, 1896.

Sixty days after date we promise to pay to the order of Los Angeles Sewer Pipe Association one hundred thirty-three & $\frac{84}{100}$ dollars, for value received, with interest at the rate of 8 per cent. per annum, at office of the Los Angeles Iron & Steel Company.

THE LOS ANGELES IRON & STEEL CO.,
By A. S. ROBBINS, *President.*
S. C. CHAMBERLAIN, *Ass't Sec'y.*

That said note bears the following indorsement:

9 Los Angeles Sewer Pipe Association, by W. A. Bingham, sec.; Jas. M. Riley, W. A. Bingham.

That no part of said note or of the indebtedness evidenced thereby has been paid, and that there is now, to wit, September 30th, 1898, due, owing, and unpaid thereon the sum of $153.35.

IV.

That said Los Angeles Sewer Pipe Association, prior to the commencement of this action, assigned, transferred, and set over to plaintiff all its right, title, and interest in and to said note and the in-

debtedness evidenced thereby, and that plaintiff is now the lawful owner and holder thereof; that said defendants are individually liable to plaintiff for the respective proportions hereinabove specified of said sum of $153.35, and that no part of the same has been paid.

Sixth cause of action.

And for a sixth cause of action plaintiff alleges:

I.

Plaintiff expressly refers to paragraphs I, II, III, and IV above set out in the first cause of action in this complaint, and repleads each and all of said paragraphs, and by such reference and repleading makes each and all of said paragraphs a part hereof, as though the same and each of them should be herein set out.

II.

That between the 1st day of August, 1896, and the 10th day of December, 1896, Stanley Richmond sold and delivered goods, wares, and merchandise, to wit, fuel oil, to said Los Angeles Iron & Steel Company, at its special instance and request, to the value of $475.95, and thereafter and as a settlement of the said account and upon the respective dates thereof said Stanley Richmond drew upon
10 said Los Angeles Iron & Steel Company two drafts in words and figures respectively as follows, to wit:

LOS ANGELES, CAL., *September* 17, 1896.

L. A. Iron & Steel Co., city.

GENTLEMEN: Please pay Mr. Libby the sum of two hundred forty-nine $\frac{54}{100}$ dollars ($249.54) and charge the same to my account, and oblige—

STANLEY RICHMOND.

Said draft bears the following acceptance written across the face thereof, to wit:

Accepted, payable Oct. 8th, 1896. The Los Angeles Iron & Steel Co., by J. G. Chamberlain, gen'l mgr.

That said draft was duly presented for payment, but no part thereof has been paid, except the sum of $100, paid on or about Oct. 20, 1896.

Also—

LOS ANGELES, CAL., *Dec. 10th*, 1896.

L. A. Iron & Steel Co., city.

GENTLEMEN: Please pay C. H. Libby or order the sum of two hundred twenty-six and $\frac{44}{100}$ dollars and charge the same to my account, and oblige—

(Signed) STANLEY RICHMOND.

Said draft bears the following acceptance written across the face thereof, to wit: The above account and order is hereby accepted by

us. The Los Angeles Iron & Steel Co., by J. G. Chamberlain, gen'l mgr.

That said draft was duly presented for payment, but that no part thereof has been paid.

III.

That thereafter, to wit, on the 8th day of March, 1897, in an action in the superior court of Los Angeles county, California, brought by said C. H. Libby to recover the said amounts as specified in said aforementioned drafts from said corporation, judgment was rendered and entered by said court in favor of said plaintiff for the sum of three hundred eighty-three $\frac{54}{100}$ ($383.54) — and costs, amounting to the sum of $8.05, and that no part of said judgment has been paid, but the same ever since has been and now is wholly due and unpaid and unsatisfied.

11

IV.

That prior to the commencement of this action the said C. H. Libby assigned, transferred, and set over to plaintiff herein all right, title, interest, and claim in and to said aforementioned drafts and in and to the claim and account evidenced thereby and in and to the said judgment, and that plaintiff is now the lawful owner and holder thereof, and that the same has not been paid; that there is now due, owing, and unpaid from said defendants respectively the proportions hereinbefore set out of said sum of $391.59.

Wherefore plaintiff demands judgment against said defendants and each of them respectively, as follows, to wit:

| | | |
|---|---|---|
| Against | H. L. Pinney, for the sum of | $127.25 |
| | C. L. Pinney, for the sum of | 106.89 |
| | R. H. Herron, for the sum of | 63.63 |
| | F. Irwin Herron, for the sum of | 25.45 |
| | W. C. Patterson, for the sum of | 89.07 |
| | A. S. Robbins, for the sum of | 299.00 |
| | Judgment for a greater sum being expressly waived. | |
| | C. W. Damorel, for the sum of | 231.60 |
| | J. H. Harris, for the sum of | 63.63 |
| | C. D. Pillsbury, for the sum of | 96.71 |
| | F. R. Harris, for the sum of | 292.67 |
| | Blanton Duncan, for the sum of | 76.35 |
| | Albert Thomas, doing business as the Union iron works, for the sum of | 89.07 |
| | Clark & Niemann, partners, for the sum of | 2.55 |
| | Union Oil Company, a corporation, for the sum of | 114.52 |
| | F. E. Little, for the sum of | 55.99 |
| | W. J. Boyle, for the sum of | 89.07 |
| | John D. Clark, for the sum of | 15.27 |
| | Thomas Brooks, for the sum of | 96.71 |

| | | |
|---|---|---|
| | W. T. Adams, for the sum of | 167.97 |
| | Chas. Lytle, for the sum of | 12.72 |
| 12–18 | J. B. Anjer, for the sum of | 50.90 |
| | Sabina A. Lannon, for the sum of | 12.72 |
| | L. Bogardus, for the sum of | 5.09 |
| | D. C. Wilson, for the sum of | 2.55 |
| | Mary Spencer Evans, for the sum of | 101.80 |
| | John Rebman, for the sum of | 165.42 |
| | Jennie V. Durkee, for the sum of | 63.63 |
| | E. T. Plummer, for the sum of | 5.09 |
| | J. F. Waesch, for the sum of | 50.90 |
| | May Baldwin, for the sum of | 22.90 |
| | Mary Baldwin Hook, for the sum of | 20.36 |
| | Mary E. Yerby, for the sum of | 63.63 |

And costs.

TAYLOR & FORGY AND
FITZ E. BEACH,
*Attorneys for Plaintiff.*

(Endorsed:) 33731. Plaintiff deposits $2.00 on costs. No. 5329. In the justice court of Los Angeles city, county of Los Angeles, State of California. R. T. Nelson, plaintiff, *vs.* H. L. Pinney *et al.*, defendants. Complaint. Filed Sep. 30, 1898. D. C. Morrison, city justice. Filed Oct. 23, 1899. C. W. Bell, clerk, by J. O. Lowe, deputy.

19 In the Superior Court of the County of Los Angeles, State of California.

R. T. NELSON, Plaintiff,
*vs.*
H. L. PINNEY ET AL., Defendants. } Answer.

Now come defendants W. C. Patterson, C. L. Pinney, H. L. Pinney, and Thomas Brooks and answer plaintiff's complaint as follows:

I.

Defendants deny each and every allegation contained in plaintiff's complaint except the allegation that the Los Angeles Iron and Steel Company is a corporation organized and existing under the laws of the State of Colorado.

II.

Defendants allege that there is no statute of the State of Colorado providing that stockholders shall be liable for any portion of the indebtedness of a corporation, and allege that under the laws of the State of Colorado a stockholder in a corporation is not liable for any portion of the indebtedness of said corporation.

III.

Defendants allege that plaintiff relies wholly in this action upon the provisions of section 322 of the Civil Code of California, which section provides as follows:

"Each stockholder of a corporation is individually and personally liable for such portions of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it shall be dismissed, as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the instalments or purchase-money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian, or trustee, shall not be liable under the provisions of this section, by reason of any such investment; nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person or estate represented, is to be deemed the stockholder as respects such liability. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability, as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other State or Territory of the United States, or of any foreign country, and doing business within this State, shall be the same as the liability of a stockholder of a corporation created under the constitution and laws of this State."

And defendants allege that there is no other statute of the State of California providing that stockholders shall be liable for any por-

tion of the indebtedness of a corporation, and defendants allege that the provisions of said section 322 of the Civil Code of Cali-
21 fornia attempting to provide that the stockholders of a foreign corporation shall be liable for the indebtedness of the corporation are unconstitutional and invalid because contrary to the provision of section 10, article 1, of the Constitution of the United States, providing that no State shall pass a law impairing obligations of contracts, and also invalid and unconstitutional because in violation of the provisions of section 1 of article XIV of the Constitution of the United States, providing that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

McKINLEY & GRAFF,
*Attorneys for Defendants Patterson et al.*

Endorsed: (Filed Jan. 9, 1900.) C. W. Bell, clerk, by Henry Sherer, deputy.

22 In the Superior Court of the County of Los Angeles, State of California.

R. T. NELSON, Plaintiff,
*vs.*
H. L. PINNEY ET AL., Defendants. } Stipulation.

It is hereby stipulated that all of the allegations of plaintiff's complaint are true except the allegations that defendants became and are, individually and personally, liable for certain proportions of the indebtedness of the Los Angeles Iron & Steel Company, and that all of the allegations of defendants' answer are true except the allegations as to the unconstitutionality and invalidity of section 322 of the Civil Code of California as being in violation of the Constitution of the United States, and that the truth or falsity of the allegations excepted as above is dependent upon the question as to whether section 322 of the Civil Code of California is in violation of the provisions of the Constitution of the United States.

And it is stipulated that the only question in this case is as to whether section 322 of the Civil Code of California is in violation of the provisions of the Constitution of the United States, and if it is in violation of such provisions defendants are entitled to judgment, but if said section is not in violation of said provisions, then plaintiff is entitled to judgment as prayed for in his complaint.

TAYLOR & FORGY &
FRITZ E. BEACH,
*Attorneys for Plaintiff.*
McKINLEY & GRAFF,
*Attorneys for Defendants.*

Filed Jan. 9, 1900.
C. W. BELL, *Clerk*,
By HENRY SHERER, *Deputy.*

23 In the Superior Court of the State of California in and for the County of Los Angeles.

R. T. NELSON, Plaintiff,
vs.
H. L. PINNEY, C. L. PINNEY, W. C. Patterson, C. W. Damerel, Thomas Brooks, and F. E. Little, Defendants.

No. 33731. Findings of Fact and Conclusions of Law.

This cause coming on to be heard for trial the 17th day of January, 1900, Taylor & Forgy, Esqs., appearing for the plaintiff, and J. W. McKinley, Esq., Flint & Barker, Esqs., and Ben. Goodrich, Esq., appearing for the defendants—

A jury trial was duly waived and the cause was tried by the court without a jury.

Proofs were duly made by the respective parties and their stipulation, duly executed, was filed herein, and thereafter the cause was submitted to the court for its decision.

Being fully advised in the premises and having duly considered the same and the stipulations of the parties, the court makes the following findings of fact herein:

I.

That all the allegations of the complaint are true, and that the allegations of the answer are not true where the same are in conflict with the allegations of said complaint.

II.

That the Los Angeles Iron & Steel Company was a corporation organized on the 8th day of March, 1893, and incorporated under the laws of the State of Colorado; that the seventh provision of its articles of incorporation is as follows, to wit: The said company is created for the purpose of carrying on part of its business beyond the limits of the State of Colorado, and the principal office of
24 said company in the State shall be kept at the city of Denver, Arapahoe county, and the principal plant and principal operations of said company beyond the limits of the State shall be in Los Angeles county, State of California, and such other places in the State of California as may be decided upon by the board of directors. The principal business of said company in the State of Colorado shall be carried on in Arapahoe county.

III.

That the defendants are and were at all times herein mentioned residents and citizens of the State of California.

IV.

That all the indebtedness of said Los Angeles Iron & Steel Company to plaintiff and to plaintiff's assignors was created by contracts made, executed, and to be performed in the State of California.

VI.

That at the time the said indebtedness was created and incurred by the said company there were issued of the capital stock thereof the number of 1,311 shares, and that the defendants were at said times the owners respectively of the number of said shares as set opposite their respective names, as follows, to wit:

H. L. Pinney, 50 shares.
C. L. Pinney, 42 shares.
W. C. Patterson, 35 shares.
C. W. Damerel, 91 shares.
F. E. Little, 22 shares.
Thomas Brooks, 38 shares.

VII.

That the amount of the indebtedness of said Los Angeles Iron & Steel Company to the plaintiff upon the several causes of action mentioned in the complaint herein to date is as follows, to wit:

Upon the 1st cause of action, $1,311.50, and $288.38 interest;
Upon the 2nd cause of action, $462.00, and $— interest;
Upon the 3rd cause of action, $602.28, and $130.80 interest;
Upon the 4th cause of action, $173.13, and $38.54 interest;
Upon the 5th cause of action, $133.84, and $34.93 interest;
Upon the 6th cause of action, $383.54, and $78.42 interest,
Making in all the sum of $3,637.36, no part of which is paid.

VIII.

That said H. L. Pinney is liable to plaintiff for 50/1311 thereof, and said C. L. Pinney is liable to plaintiff for 42/1311 thereof, and said W. C. Patterson is liable to plaintiff for 35/1311 thereof, and said C. W. Damerel is liable to plaintiff for 91/1311 thereof, and said F. E. Little is liable to plaintiff for 22/1311 thereof, and said Thomas Brooks is liable to plaintiff for 38/1311 thereof.

IX.

That section 322 of the Civil Code of California, under which said defendants are liable for the payment of said proportions of the indebtedness of the Los Angeles Iron & Steel Company to plaintiff, is not in violation of any of the provisions of the Constitution of the United States.

*Conclusion of Law.*

As a conclusion of law from the foregoing facts plaintiff is entitled to several judgments against said defendants respectively, as follows, to wit:

| | |
|---|---|
| Against H. L. Pinney for the sum of | $138.70 |
| Against C. L. Pinney for the sum of | 116.50 |
| Against W. C. Patterson for the sum of | 97.09 |

Against C. W. Damerel for the sum of..... 251.43
Against F. E. Little for the sum of..... 61.02
26 Against Thomas Brooks for the sum of..... 105.41

$770.85

And the costs of suit.
Dated Los Angeles, Cal., January 25th, 1900.

W. F. FITZGERALD,
*Judge of the Superior Court.*

Endorsed: Filed Jan. 25, 1900. C. W. Bell, clerk, by C. G. Keyes, deputy.

27 In the Superior Court of the State of California in and for the County of Los Angeles.

R. T. NELSON, Plaintiff,
*vs.*
H. L. PINNEY, C. L. PINNEY, W. C. PATTERSON, C. W. Damerel, F. E. Little, and Thomas Brooks, Defendants. } Judgment. No. 33731.

This cause coming on for trial on the 17th day of January, 1900, the parties duly appearing by their respective counsel, Taylor & Forgy for the plaintiff, and J. W. McKinley, Ben. Goodrich, and Flint & Barker for the defendants—

The cause having been tried by the court without jury and proofs having been duly made, the cause was argued and submitted, whereupon the court rendered judgment for the plaintiff and duly made and filed its findings of fact and conclusions of law therefrom, wherein it was found and concluded that plaintiff was entitled to several judgments against said defendants:

Now, therefore, it is ordered, adjudged, and decreed that the plaintiff, R. T. Nelson, do have and recover of the defendants severally the amounts as follows, to wit:

Of H. L. Pinney, the sum of $138.70.
Of C. L. Pinney, the sum of $116.50.
Of W. C. Patterson, the sum of $97.09.
Of C. W. Damerel, the sum of $251.43.
Of F. E. Little, the sum of $61.02.
Of Thomas Brooks, the sum of $105.41.
28 And all of said defendants his costs herein, taxed at $2.00.
Dated Los Angeles, Cal., January 25th, 1900.

W. F. FITZGERALD,
*Judge of the Superior Court.*

Endorsed: Filed Jan. 25, 1900. C. W. Bell, clerk, by C. G. Keyes, deputy. Docketed Jan. 25, 1900. Entered Jan'y 2, 1900, Book 89, page 73, by D. S. Burson, Jr., deputy clerk.

29 In the Superior Court of the State of California in and for the County of Los Angeles.

R. T. NELSON, Plaintiff,
*vs.*
H. L. PINNEY ET AL., Defendants. } ss.:

I, C. W. Bell, county clerk of the county of Los Angeles, State of California, and *ex officio* clerk of the superior court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action and recorded in Judgment Book 89 of said court, at page 73, and I further certify that the foregoing papers hereto annexed constitute the judgment-roll in said action.

Witness my hand and the seal of said superior court this 25th day of January, A. D. 1900.

C. W. BELL, *Clerk*,
By D. S. BURSON, JR., *Deputy*.

30 It is hereby stipulated that the foregoing is a full and correct copy of the judgment-roll and of all the pleadings and proceedings in the action therein named in so far as the same relate to the defendants H. L. Pinney, C. L. Pinney, W. C. Patterson, and Thomas Brooks.

TAYLOR & FORGY,
*Attorneys for Plaintiff.*
McKINLEY & GRAFF,
*Attorneys for Defendants.*

30½ [Endorsed:] No. 33731. Superior court, Los Angeles county. R. T. Nelson, plaintiff, *vs.* H. L. Pinney *et al.*, defendants. Judgment-roll. Filed Jan. 25, 1900. C. W. Bell, clerk, by D. S. Burson, Jr., deputy. Entered Jan. 25, 1900, in Book 89, page 73, by D. S. Burson, Jr., deputy.

31 The Supreme Court of the United States.

W. L. PINNEY ET AL., Plaintiffs in Error,
*vs.*
R. T. NELSON, Defendant in Error.

Plaintiffs in error hereby assign the following as the errors of the court in the above-entitled action, viz:

I.

The court erred in finding that the provisions of section 322 of the Civil Code of California are not unconstitutional and invalid and contrary to the provisions of section 10, article 1, of the Constitution of the United States, providing that no State shall pass a law impairing the obligations of contract.

II.

The court erred in finding that the provisions of section 322 of the Civil Code of California, attempting to provide that the stock-

holders of a foreign corporation shall be liable for the indebtedness of the corporation, are not invalid, unconstitutional, and — violation of the provisions of section I of article XIV of the Constitution of the United States, providing that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III.

The court erred in rendering judgment for plaintiff because the provisions of section 322 of the Civil Code of California, attempting to provide that the stockholders of a foreign corporation shall be liable for the indebtedness of the corporation, are unconstitu-
32 tional, invalid, and in violation of the provisions of the Constitution of the United States mentioned in the above assignments of error.

Wherefore plaintiffs in error pray that said judgment be reversed.

McKINLEY & GRAFF,
*Attorneys for Plaintiffs in Error.*

(Endorsed:) Filed Apr. 23, 1900. C. W. Bell, clerk, by J. O. Lowe deputy.

33 [Endorsed:] No. —. In the Supreme Court of the United States. H. L. Pinney *et al.*, plaintiffs in error, *vs.* R. T. Nelson, defendant in error. Assignment of errors. McKinley and Graff, att'ys for pl't'ffs in error.

34 [Endorsed:] No. 33731. In the Supreme Court of the United States. H. L. Pinney *et al.*, plaintiffs in error, *vs.* R. T. Nelson, defendant in error. Writ of error, citation, return. McKinley & Graff, att'ys for pl't'ffs in error.

35 Original.

In the Supreme Court of the United States.

H. L. PINNEY ET AL., Plaintiffs in Error,
*vs.*
R. T. NELSON, Defendant in Error.

It is hereby stipulated that the clerk of the Supreme Court shall only cause to be printed in the above-entitled action the following portions of the record, viz., the writ of error and order allowing the same, the citation, the complaint, the answer filed in the superior court Jan'y 9th, 1900, the stipulation, the findings of fact and conclusions of law, judgment, and assignment of errors.

M. L. GRAFF,
*Counsel for Plaintiffs in Error.*
J. A. ANDERSON,
*Counsel for Defendant in Error.*

J. W. McKINLEY,
*Attorneys for Plaintiffs in Error.*
W. S. TAYLOR AND
EDWARD W. FORGY,
*Attorneys for Defendant in Error.*

36 [Endorsed:] Original. No. —. In the Supreme Court of the United States. H. L. Pinney *et al.*, plaintiffs in error, *vs.* R. T. Nelson, defendant in error. Stipulation. McKinley & Graff, attorneys for pl'ffs in error.

37 [Endorsed:] File No., 17,766. Supreme Court U. S., October term, 1899. Term No., 652. H. L. Pinney *et al.*, pl'ffs in error, *vs.* R. T. Nelson. Stipulation as to printing record. Office Supreme Court U. S. Filed May 14, 1900. James H. McKenney, clerk.

Endorsed on cover: File No., 17,766. California superior court, Los Angeles county. Term No., 284. H. L. Pinney, C. L. Pinney, W. C. Patterson, and Thomas Brooks, plaintiffs in error, *vs.* R. T. Nelson. Filed May 16th, 1900.